

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD ROSS,

Plaintiff,

CASE NO. 24-CV-11766

v.

HON. ROBERT J. WHITE

CITY OF TROY;

PETER HULLINGER, Individually and in
his Official Capacity as the Troy Fire Department Fire Chief;

MARK MILLER, Individually and in his Official Capacity
as the former Troy City Manager;

ROBERT BRUNER, Individually and in his Official Capacity
as the former Assistant City Manager and Acting City Manager,

Defendants.

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**DEFENDANTS' FIRST MOTION TO COMPEL RESPONSES TO
DISCOVERY REQUESTS**

NOW COME Defendants, CITY OF TROY, PETER HULLINGER, MARK MILLER, and ROBERT BRUNER, through counsel, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, PC, by MICHAEL T. BERGER, who, for the reasons more fully stated in the accompanying Brief in Support, respectfully ask this Court to GRANT their motion. Defendants sought concurrence from Plaintiff in the relief requested on January 14, 2025, but Plaintiff did not concur in the relief sought.

Respectfully submitted:

ROSATI, SCHULTZ, JOPPICH
& AMRSBUECHLER, PC

/s/ Michael T. Berger

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Dated: January 16, 2025

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**DEFENDANTS' BRIEF IN SUPPORT OF FIRST MOTION TO
COMPEL RESPONSES TO DISCOVERY REQUESTS**

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MOST CONTROLLING AUTHORITY

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Fed. R. Civ. P. 37

ISSUE PRESENTED

- I. SHOULD PLAINTIFF BE COMPELLED TO RESPOND TO DEFENDANTS' DISCOVERY REQUESTS WITHIN SEVEN (7) DAYS?

Defendants answer: "Yes."

Plaintiff answers: "No."

INTRODUCTION

Defendants served Plaintiff, Edward Ross ("Ross") with discovery requests. Ross, however, has failed to respond to those requests, even after Defendants provided him with an extension to the deadline set forth by the Court Rules. The Court, therefore, should compel him to answer those requests within seven days and enter an order deeming any objection he would have had to the requests waived.

STATEMENT OF FACTS

On or about August 7, 2024, Ross, a former volunteer firefighter and current resident of the City of Troy, brought a single-count suit against the City and three of its employees or former employees. (Complaint – ECF No. 1) Therein, he alleged that Hullinger, Miller, and Bruner effectuated the termination of his employment after he openly criticized the operation of the Department as both a municipal worker and a candidate for elected office. (ECF No. 1). Specifically, Ross alleged that Hullinger, Miller, and Bruner “harbored an impermissible animus towards [him] for his exercise of protected speech.” (ECF No. 1, PageID.5)

On October 30, 2024, Defendants served their Rule 26 Disclosures and First Discovery Requests. (Ex. 1 – Disclosures and Discovery). Because Defendants served their discovery requests on October 30, 2024, Ross’s responses were due 30 days later. See Fed. R. Civ. P. 33(b)(2) and Fed. R. Civ. P. 34(a)(2)(A). In a November 25, 2024 email to counsel for Defendants, Plaintiff’s counsel

acknowledged receipt of Defendants' discovery requests, and, on account of it being the week of Thanksgiving, requested an additional 14 days to respond thereto. (Ex. 2 – Extension Email Thread). Within the hour, counsel for Defendants agreed to the extension.

As of the date of this filing, Ross has neither responded to any of Defendants' discovery requests nor apprised Defendants of the progress, if any, made in this regard.

LAW & ARGUMENT

A party may serve on another party interrogatories and requests to produce. Fed. R. Civ. P. 33(a)(1); Fed. R. Civ. P. 34(a)(1). The responding party must answer those discovery requests within 30 days. Fed. R. Civ. P. 33(b)(2); Fed. R. Civ. P. 34(b)(2)(A). A party waives their objections to interrogatories or requests to produce if they are not timely made. FRCP 34(b)(4); *Siser N. Am., Inc. v. Herika G. Inc.*, 325 F.R.D. 200, 202 (E.D. Mich. 2018); *Mayes v. City of Oak Park*, No. CIVA 05-CV-74386-DT, 2007 WL 328929, at *2 (E.D. Mich. Jan. 30, 2007). "On notice to other parties and all affected persons, a party may move for an order compelling...discovery." Fed. R. Civ. P. 37(a)(1). On such a motion, the Court may enter an order compelling responses to interrogatories and/or requests to produce. Fed. R. Civ. P. 37(a)(3)(iii)-(iv).

Here, Ross has not responded to Defendants' discovery requests, despite the extended deadline to respond to those having passed. Accordingly, the Court should enter an order compelling Ross to respond to the outstanding discovery responses and order that any objection he has be deemed waived.

CONCLUSION

For the foregoing reasons, Defendants respectfully ask this Court to enter an order compelling Ross to respond to Defendants' discovery requests within seven (7) days and enter an order deeming any objection he may have had to any request waived.

Respectfully submitted:

ROSATI, SCHULTZ, JOPPICH
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Dated: January 16, 2025

CERTIFICATE OF SERVICE

I certify that on January 16, 2025, the foregoing document was filed through the CM/ECF system, which will electronically notify all parties and/or their counsel of such filing.

/s/ Sheila Bodenbach

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BRIEF CERTIFICATION

I, Michael T. Berger, certify that the foregoing brief complies with Eastern District of Michigan Local Rules 5.1(a), 5.1.1, and 7.1, and Judge White's Case Management Requirements, including the following (click each box to indicate compliance):

- ☒ the brief contains a statement regarding concurrence, *see* LR 7.1(a);
- ☒ the brief, including footnotes, uses 14-point font, *see* LR 5.1(a)(3);
- ☐ the brief contains minimal footnotes and, in all events, no more than 10, *see* Case Management Requirements § III.A;
- ☒ the brief and all exhibits are filed in searchable PDF format, *see* Case Management Requirements § III.A;
- ☒ except for footnotes and necessary block quotes, the brief is double spaced (not "Exactly 28 pt" spaced) with one-inch margins, *see* LR 5.1(a)(2);
- ☐ deposition transcripts have been produced in their entirety (not in minuscrit), *see* Case Management Requirements § III.A;
- ☐ if the brief and exhibits total 50 pages or more, I will mail to chambers a courtesy copy with ECF headers, *see* Case Management Requirements § III.B.

I also acknowledge that my brief will be stricken from the docket if the Court later finds that these requirements are not met.

Respectfully submitted:

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